



Geneva, August 16, 2018

Prime Minister Prayuth Chan-o-cha
Royal Thai Government House
1 Phitsanuloke Road
Dusit, Bangkok 10300

Your Excellency, Mr Prime Minister

Re: Draft Law to amend the Thai Copyright Act – new Section 32 (4)

We the signatories below would like to bring to your consideration our concerns regarding certain impending changes to the Thai Copyright Act. We believe that these changes could have unintended but serious impacts on the livelihoods of authors, publishers and retailers, and therefore on the strength and diversity of Thai culture.

We acknowledge receipt of a letter dated 3 August 2018 from Mr Buntan in response to our previous communications with the Ad Hoc Committee Considering the Copyright Bill, and we understand that Thailand is expanding its adhesion to the international copyright treaties administered by WIPO (including the Marrakesh Treaty), which ensure the global integrity of copyright. Publishers and authors strongly support the Marrakesh Treaty and are committed to making our works accessible to all audiences, including those with disabilities. However, we have the following concerns regarding the new exception:

1. To ensure respect for the Berne Convention's 3-step test, the Marrakesh Treaty's exceptions must be defined narrowly as follows: *'The limitation or exception provided in national law should permit changes needed to make the work accessible in the alternative format.'* Similarly, beneficiaries are defined as *'blind, visually impaired or print disabled persons'*;

2. Under Article 4 of the Marrakesh Treaty the exception only applies for the purposes of converting a work into an accessible format, *if said format is not yet available*. If the work is available in an accessible format, or if no new format is required to ensure access by visually impaired people, then the exception should not be applied.

The proposed law, however, enables copyright protected works to be reproduced, adapted and communicated to the public for people with any disabilities (not just visual ones), even if an accessible format copy is not required to ensure access or when such a format is already available in the market. The use of works for purposes other than producing an accessible format copy and in such broad terms is not in accordance with the Marrakesh Treaty and arguably exceeds the remit of the Berne Convention's 3-step test. We therefore suggest the inclusion in Section 32 (4) of wording in line with Article 4 of the Marrakesh Treaty: *'the exception will operate when the work is converted to an accessible format copy, which may include any means needed to navigate information in the accessible format, but does not introduce changes other than those needed to make the work accessible to the beneficiary person'*.

3. The Marrakesh Treaty is not applicable to the communication to the public right or to the adaptation right. We therefore suggest that this reference in the draft law be replaced with the wording of the Marrakesh Treaty:

'the right to reproduce and distribute copies to the beneficiaries, to the extent required for producing an accessible format copy'.

4. The cross-border mechanism in Article 9 of the Marrakesh Treaty aims at exchanging information about production of accessible format copies, under a set of guidelines. This mechanism does not authorize one WIPO Member State to grant permission in its national law to organizations in another Member State to communicate to the public an original work. The principle of 'national treatment' and the underlying foundations of the principle of reciprocity in the Berne Convention would be at stake. We suggest the reference to 'organizations recognized abroad' be deleted from the draft law.

We are concerned about the dangerous impacts that over-broad exceptions can have on creative industries in Thailand and we emphasize our availability to work constructively with the legislative authorities of Thailand to achieve a provision that is compliant with the Marrakesh Treaty, to the benefit of visually impaired persons or otherwise print disabled people but without negative effects on creators, copyright stakeholders and retailers.

We thank you very much for your time and consideration and remain available for any additional information that you may require.

Yours sincerely,



José Borghino
Secretary General, IPA

On behalf of the organisations listed below:

European and International Booksellers Federation (EIBF), Ms Fran Dubruille, Director
Federation of European Publishers (FEP), Ms Anne Bergman-Tahon, Director
International Authors Forum (IAF), Mr John Degen, Chair
International Federation of Reproduction Rights Organisations (IFRRO), Ms Caroline Morgan, CEO
International Publishers Association (IPA), Mr José Borghino, Secretary General

Cc: Distinguished President of the National Legislative Assembly of Thailand, Mr Pornpetch Vichitcholchai
Distinguished Chairman of the Ad Hoc Committee Considering the Copyright Bill. Mr Buntan
Distinguished Director General of the IP Office of Thailand, Mr Thosapone Dansuputra
Distinguished Deputy Director General of the IP Office of Thailand, Mr Direk Boontae